



Washington State
Department of Transportation
Sid Morrison
Secretary of Transportation

DOCKET FILE COPY ORIGINAL

Transportation Building
P.O. Box 47300
Olympia, WA 98504-7300

February 6, 1998

Magalie Salas, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: CC DOCKET No. 98-1

In the Matter of the State of Minnesota's Request for
Declaratory Ruling Regarding Applicability of Section 253
of the Federal Telecommunications Act to Longitudinal
Easements on the State Freeway System.

Dear Secretary Salas:

For the following reasons Washington State Department of Transportation (WSDOT) respectfully requests the Federal Communications Commission to grant the declaratory ruling for the State of Minnesota.

Limited access highway facilities are unique and have needs in excess of common highways, roadways and streets. Such facilities are constructed to a high standard and are designed to enhance safety and operations for the motoring public. Those highway standards include physically limiting locations where motorists can enter and exit the facility. The standards also include removing and significantly limiting the location and placement of utility facilities such as lines and equipment. However, Federal law and action has recently recognized that the careful placement and use of telecommunications facilities is potentially advantageous to achieve improved safety and operations on limited access facilities when properly accommodated and controlled.

It is important to realize that limited access highways comprise a small portion of the highway, road and street systems across the United States. At the same time, due to their high standards for performance and safety, they carry a very high percentage of traffic very safely. For example, in Washington, accident rates on Interstate are one third those on non-limited access facilities, while at the same time carrying five to ten times the traffic. To continue these dramatic differences, limited access highways must continue to maintain limited interference from non-highway facilities and users.

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Magalie Salas, Secretary

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The construction standards for limited access facilities, to the extent possible, have previously precluded utility installations. That reduces objects subject to collisions as well as potential traffic conflicts. In addition, limited access is very costly to acquire. When WSDOT acquires limited access facilities, it purchases the rights of way in essentially two phases. First, it values the property and pays the property owner that value. Second, it values the access to the highway and the use by utilities and other secondary users, and pays additionally for that value of prohibiting access. The Department is either responsible for or shares in the cost of relocating, to the extent possible, those secondary facilities including telecommunications systems. That is in contrast to non-limited access where relocation of utilities is typically at the expense of the owner, not WSDOT.

Beyond the increased cost aspect of multiple installations, the installations often compromise safety and operations. The most obvious impacts occur during construction. Multiple installations, with the additional personnel and equipment operating in a typically high traffic volume environment, greatly increase vehicle conflicts which in turn increases accident probability. Another problem is the ongoing personnel and equipment required to operate and maintain the telecommunications infrastructure once it is in place. Maintenance and operations, unlike construction, is typically reactive in nature and is completed with minimal planning, resulting in a higher degree of conflicts and exposure.

By restricting access to a single provider, the potential vehicle conflicts and exposures is greatly reduced when compared to multiple providers on the limited access.

WSDOT understands the need for competitive neutrality. The Department also understands that in an ideal world, all competitors would have equal access at all times. The reality is that accommodation of all telecommunications providers on facilities funded, designed and constructed to maximize safety and operations for the highway user is counter to that reasoning. Section 253(c) in the Telecommunications Act of 1996 specifically recognizes that reality by allowing public agencies to continue to maintain and establish rules for the accommodations of private telecommunications providers. An open neutral competitive process to allow exclusive access to public rights of way with an understanding that Federal law requires the "winner" of that access to allow other providers use of their facility for a reasonable costs is clearly within the intent of the law.

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WSDOT believes Minnesota's approach would provide reasonable restriction while still permitting telecommunications facilities on the limited access rights of way. It would increase available infrastructure to allow a more open and competitive environment for the deregulation of the telecommunications industry while protecting the unique assets of the limited access facilities across the country. It would also open an opportunity to address emerging and critical Intelligent Transportation Systems needs in a scenario that combines the needs of the otherwise disparate users.

Sincerely,

A handwritten signature in black ink, appearing to read "Sid Morrison". The signature is fluid and cursive, with a large initial "S" and "M".

Sid Morrison

Secretary of Transportation

SM:def/98-014
Enclosure

cc: James Denn, Minnesota DOT, w/enclosure
Janice Myles, FCC, w/enclosure
Al King, 47390, w/enclosure
John Milton, 47329, w/enclosure
Don Nelson, 47323, w/enclosure



Minnesota Department of Transportation

Transportation Building

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January 20, 1998

RECEIVED

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OFFICE OF THE SECRETARY
DEPARTMENT OF TRANSPORTATION

Sid Morrison
Secretary of Transportation
WA State Dept of Transportation
POB 47316, or Transp Bldg Rm 3D25
Olympia WA 98504-7316

Re: Federal Telecommunications Act of 1996; Impact on Public
Right of Way of Longitudinal Easements for Telecommunications Purposes

Dear Mr. Morrison:

In 1996 the State of Minnesota, acting through its Department of Transportation (MnDOT), requested proposals from consortia interested in installing telecommunications infrastructure within the State's freeway system. The State has since selected one of the proposers, negotiated an agreement and in December 1997 signed a contract to accomplish the project.

A concern has been raised by owners and operators of existing telecommunications networks that any agreement which allows only one private entity to own communications infrastructure on freeway right-of-way violates Section 253 of the Telecommunications Act of 1996, regardless of how such an agreement is structured. Inasmuch as the State has worked hard in a manner that minimizes the impacts on the safety of the traveling public and insures access to the infrastructure on a nondiscriminatory basis, the State respectfully disagrees.

To clarify the applicability of Section 253 and in recognition of this issue's importance to all freeway right-of-way holders, the State recently filed with the Federal Communications Commission (CC DOCKET NO. 98-1) a petition for a declaratory ruling that the agreement the State is structuring with its private partner is consistent with and does not violate Section 253 of the Federal Telecommunications Act. The purpose of this letter is to seek your formal support of the State's FCC petition. The petition is accessible in electronic format at www.dot.state.mn.us or available in printed copy directly from MnDOT. The petition describes the nature of the transaction we are negotiating and the legal analysis supporting the State's position.

The clear and unequivocal issue for the State of Minnesota and other right-of-way holders is how to balance the overriding interest in ensuring the safety of the traveling public with the desire to accommodate the growing demands of the telecommunications industry. The State feels it must choose, on the one hand, between continuing its long-held policy against longitudinal easements on limited access freeways or, on the other hand, allowing such access to be installed on a one-time basis, by a single entity charged with maintaining the infrastructure and marketing it on a competitively neutral and non-discriminatory basis. We believe the transaction we are structuring accommodates both interests in a way that is consistent with the new legislation.

Federal Telecommunications Act of 1996

January 20, 1998

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Our request for a declaratory ruling presents the FCC with an opportunity to clarify the rights of freeway right-of-way holders around the country to grant longitudinal easements under specified circumstances without federal prohibition. The FCC ruling may have significant impacts on State utility accommodation policies. In April 1997 the Board of Directors of the American Association of State Highway and Transportation Officials (AASHTO) unanimously adopted a formal resolution in support of our position.

Given the issue's national importance and the many highway and transit agencies across the country who would benefit from administrative guidance, it is our hope the FCC will recognize the need to render an affirmative ruling on an expedited basis.

We also enclose a form of a letter you might consider using in support of our request. Please feel free to modify and tailor it to your position, but recognize that it will be effective only if it is submitted properly.

An original and 12 copies of your comments must be filed no later than February 9, 1998, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20054. All pleadings are to reference CC Docket No. 98-1.

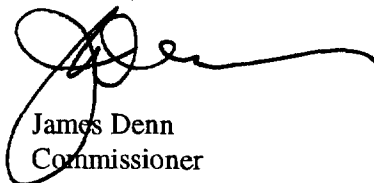
An additional copy of all pleadings must be sent to Janice M. Myles, Common Carrier, Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554 and to International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036.

For additional information and a complete set of submission guidelines, please refer to the enclosed FCC Public Notice requesting comments on the State of Minnesota's petition.

Please let us know what assistance we can provide to assist in securing your support. Feel free to contact Adeel Lari, Director of the MnDOT Office of Alternative Transportation, by phone (612-282-6148) or by E-Mail (adeel.lari@dot.state.mn.us).

Thank you for your prompt consideration.

Sincerely,



James Denn
Commissioner

_____, 1998

Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 200554

Re: CC DOCKET No. 98-1

In the Matter of the State of Minnesota's Request for
Declaratory Ruling Regarding Applicability of Section 253
of the Federal Telecommunications Act to Longitudinal
Easements on the State Freeway System.

Dear Ms. Salas:

We have reviewed the above-referenced Request for Declaratory Ruling and are writing to urge the Federal Communications Commission to act on the request, to do so expeditiously and to declare Minnesota's agreement consistent with Section 253 of the Telecommunications Act of 1996, as the State contends.

As the guardian of significant freeway right-of-way, we have interests parallel to the State of Minnesota. We constantly work to maximize safe and efficient operation of ... (our principal mission) ... Longitudinal easements within our freeway right-of-way present significant problems in this regard. While it is incumbent upon all agencies to seek to accommodate and benefit from the telecommunications industry, we can do so only in a manner that recognizes the paramount needs for safe and efficient operations.

In our view, the approach the State of Minnesota is taking to this issue carefully balances these competing interests consistently with Section 253.

If we can provide any further information or answer any questions, please do not hesitate to contact us.

Sincerely,

Name
Title

cc: Common Carrier Bureau (Janice Myles)
International Transcription Services, Inc.

IC NOTICE
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET N.W.
WASHINGTON, D.C. 20554

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DA 98-32

COMMISSION SEEKS COMMENT ON MINNESOTA PETITION FOR
DECLARATORY RULING CONCERNING ACCESS TO FREEWAY
RIGHTS-OF-WAY UNDER SECTION 253 OF THE TELECOMMUNICATIONS ACT

CC DOCKET NO. 98-1

Released: January 9, 1998

In a filing dated December 30, 1997, the State of Minnesota petitioned the FCC for an expedited declaratory ruling that the State's proposal to grant a wholesale provider of fiber optic transport capacity exclusive access to State freeway rights-of-way, subject to conditions designed to ensure competitive neutrality and non-discrimination, is consistent with section 253 of the Communications Act. After a competitive procurement process, the State entered into an agreement giving the team of ISC/UCN, a Colorado limited liability company, and Stone & Webster Engineering Corp. (the fiber provider), exclusive access for ten years to certain State freeway rights-of-way for installation of fiber optic cable along the rights-of-way. In exchange the fiber provider will give the State both "lit" and dark fiber capacity on the net which the State will use to meet its telecommunications needs. Minnesota adds that the agreement requires that the fiber provider, on a competitively neutral and non-discriminatory basis: (1) install fiber capacity owned by third parties concurrent installation of its own fiber; and (2) make the capacity of its own system available through purchase and/or lease to all interested telecommunications service providers. Minnesota argues that exclusive physical access to these freeway rights-of-way by a single entity is necessary to protect the public interest, and will not prevent any from providing telecommunications service.

Interested parties are to file an original and 12 copies of their comments on the State of Minnesota's petition no later than February 9, 1998, with the Secretary, FCC 1919 M Street, N.W., Washington, D.C. 20554. An original and 12 copies of all reply comments are to be filed with the Secretary, FCC no later than February 24, 1998. All pleadings are to reference CC Docket No. 98-1. An additional copy of all pleadings must also be sent to Janice M. Myles, Common Carrier, Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication, International Transcription Services, Inc. (Inc.), 1231 20th Street, N.W., Washington, DC 20036. The State of Minnesota's petition is available for inspection and copying during normal business hours in the FCC's Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Copies also can be obtained from ITS at 1231 20th Street, N.W., Washington, DC 20036, or by calling ITS at (202)-857-3800 or faxing ITS at 202-857-3805.

We will treat this proceeding as permit, but disclose for purposes of the Commission's ex parte rules. See generally 47 C.F.R. §§ 1.1200-1.1216. Parties making oral ex parte presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentation are set forth in section 1.1206(b) as well. Interested parties are to file with the Commission Secretary, and serve Janice Myles and ITS with copies of any written ex parte presentations or summaries of oral ex parte presentations in these proceedings in the manner specified above. We also require all written ex parte presentations or summaries of oral ex parte presentations in this proceeding to be served on all parties to the proceeding.